Block Chain contracts & its Jurisprudence

الحكم الفقهي في العقود عبر تقنية البلوكتشن

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مؤلف وباحث في الفكر الاقتصادي الإسلامي

يجيب هذا البحث عن سؤال هل هناك تضارب بين مفهوم خيار المجلس في الفقه الإسلامي والعقود المالية عبر تقنية البلوكتشن (سلسلة الكتل)؟

أُستخدمت بتفاوت مناهج متعددة مراعاة للسياق أثناء البحث. فقد اعتمدت في البحث أساسا منهج استقرائي تحليلي المقارن، وبالإضافة إلى ذلك استخدمت مسلك الاستدلال العلمي في عرض الرأيين المختلفين في الفقه، والمنهج الوصفي. وعرضت الاستنتاجات التي توصلت إليها من شرح أدلة الفريقين وتحليلها وتوجيهها بما يساعد على استنباط الحكم المناسب وخدمة غرض البحث.

وقد تكون من العناصر التالية: تعريف، توصيف العقود التقليدية والعقود الذكية من خلال الفقه الإسلامي، مقارنة وتكييف للعقود التقليدية وللعقود الذكية، ثم الاستنتاج المختار. ويتمثل في أن تعريف مجلس العقد في الفقه هو الفترة الزمنية بين العرض والقبول، وخلال تلك الفترة يظل العرض ساري المفعول ليتم ربطه بالقبول. وهو ما يقضي بالانسجام التام بين مفهوم خيار المجلس في الفقه الإسلامي والعقود المالية عبر تقنية البلوكتشن.

This research answers the question : Is there a conflict between the concept of the "option of the counciling in the contract" in Islamic jurisprudence and financial contracts using blockchain technology?

I used various methodologies to varying degrees, taking into account the context during the research. I primarily adopted an inductive, analytical, and comparative approach, and in addition, I used the scientific reasoning method in presenting the two different opinions in jurisprudence, and the descriptive method.

The conclusions reached through explaining, analyzing, and interpreting the evidence of both sides are presented to facilitate the derivation of the appropriate ruling and serve the research objective.

The research comprises the following elements: definition and description of traditional and smart contracts within Islamic jurisprudence; comparison and adaptation of traditional and smart contracts; and the chosen conclusion. This conclusion is that the "the option of the counciling in the contract" in Islamic jurisprudence refers to the period between offer and acceptance, during which the offer remains valid until it is accepted. This leads to complete harmony between the concept of the "the option of the counciling in the contract " in Islamic jurisprudence and financial contracts using blockchain technology.

I Definition

Block Chain consists in electronic conception and is manifested in smart contracts. It is controlled from home, by a single electronic fingerprint we can obtain it. Definitely smart contracts are the future of finance and they will replace the traditional one.

The difference between traditional contracts and smart contracts

Statement	Traditional contracts	Smart contracts
Third Party	overeign Institutions, Lawyers	Not Applicable
Execution time	1 to 3 days	Minutes
Transfers	via traditional ways	means are automated, via a computer network
Transparency	Not available	Available
Archiving	difficult	easy
Security	limited	By encryption
cost	High	Simple
Signature	Manual signature	Digital signature

II Jurisprudence & smart contracts

Statement	Traditional contracts	Possibility of Smart contracts
Agreement conditions	separating of bodies in making offer & having acceptance in deal	offer & acceptance
Origins	Hadith Ibn Omar	Hadith of the prophet Mohamed (Peace of God on him)

Jurisprudential opinions based on following Legal texts	(Nafi’ said: When Ibn Omar bought something he likes, he goes away) Narrated by Al-Bukhari.	“In sale the two salers have the right to have options for choice.” Narrated by Muslim
Hadith in Arabic	(قالَ نافِعٌ: وكانَ ابنُ عُمَرَ إذا اشْتَرَى شيئًا يُعْجِبُهُ فارَقَ صاحِبَهُ)	ياأَيّهَاالّذِينَ آمَنُواأَوْفُوابِالْعُقُود (الْبَيِّعانِ بالخِيارِ) (ما لم يتفرقا): تفرق أقوال (إنما البيع عن تراضٍ)
Jurist' Scholar	Imam Al-Shafi’i, Ahmad Ibn Hanbal,	Imam Abu Hanifa and Malik

(Nafii’ said: When Ibn Omar bought something he likes, he goes away) until to bind the sale, this action of Ibn Umar is understood as meaning that he had not been informed of the prohibition. Otherwise, it came in another hadith that the Prophet (peace and blessings of Allah be upon him) said: “It is not permissible for him to leave his companion for fear that he will resign.” Meaning: It is not permissible for one of them to leave the other for fear that the sale will be cancelled. Rather, the person should remain in the meeting and the option remains for him and his companion. As for him to get up and leave the place until the sale is binding, this is not permissible for him. However, the action of Ibn Umar is understood as meaning that he had not been informed of the prohibition.

Why the contracts?

Taking into consideration the conditions of people and in order to preserve their interests, Islamic Sharia organized contracts.

In Islamic Finance legal contract is when the contracting parties must be satisfied after the agreement, and it is not permissible to cancel it or to be back in sale after that.

The jurist' Islamic Scholars differ in the ruling on the option of the counciling in the contract in terms of its proof and prohibition, that is According to their difference in the meaning of being " separated تفرقا" written in the hadiths.

[..And if they separated after they buy to each other, and no one of them left the sale place, then the sale is fulfilled] agreed by Muslim & El-Boukhari

[إذا تبايعَ الرَّجلانِ فَكلُّ واحدٍ منْهما بالخيارِ ما لم يفترِقا وَكانا جميعًا أو يخيِّرَ أحدُهما الآخرَ. فإن خيَّرَ أحدُهما الآخرَ فتبايعا على ذلِكَ فقد وجبَ البيعُ. وإن تفرَّقا بعدَ أن تبايَعا ولم يترُك واحدُ منْهُما البيعَ فقد وجبَ البيعُ] [1] رواه البخاري ومسلم.

Comparison[2]

Statement	The opinion supportive The Traditional contracts	The opinion supportive Possibility of Smart contracts
Jurist' scholars	Imam Al-Shafi'i, Ahmad Ibn Hanbal, and from The Malikis Ibn Abd al-Bar, Ibn Rushd, and Ibn Habib	Imam Abu Hanifa and Malik
Legal texts meaning	separation means in the Hanbali school of thought "It was said that he should go away from him, so that he does not hear his words that he usually speaks".	The saying of Imam Abu Hanifa and Malik who went to prevent the option of the council.
Proving	It proves the council's choice of those who have pledged before separating physically, not by words.	the contract is a moral unit represented by the state of preoccupation in the council.
Meaning deal	no binding except after separation from the council by body.	The contract council is the unit of time that starts from the time the offer is issued and continues throughout the period during which the two contracting parties remain committed to the contract, without any of them objecting to the contract.
Result	The council made the two parts inclusive, even though they were separated out of necessity.	What is considered is the time period. when the sale took place in the form of offer and acceptance, the sale took place, and they were separated by words, even if they did not separate from the contract council.
Purpose	the council is fixed for the contracting parties, after the offer and acceptance, as long as they are in the council.	It is the customary period. Therefore, the fact of sitting is not intended in the assembly. The intent is to express the will of the council.

[1] البخاري، الصحيح: باب اذا خير احدهما صاحبه بعد البيع فقد وجب البيع : ح 2112: 3/64.

[2] Journal of the College of Education, No. 6, November 2016, pp.1-14

مجلة كلية التربية العدد السادس نوفمبر 2016، ص 1-14، بتصرف.

MA, Council Contract between theory and practice, pp. 73-84

ابراهيم، باسم محمد سرحان، ماجستير، مجلس العقد بين النظرية والتطبيق، ص73- 84، بتصرف.

Restriction	if the acceptance of the offer declined until the council ended, it was not obligated to fulfill the agreement likewise a break occurred.	they were separated by words, even if they did not separate from the contract council. And no one of the contracting parties could rescind this sale.
Counter argument/ consideration	the contract council is a purely spatial unit. But temporal element it should not have an effect on it. But this is not the reality. Because the time element has a great influence on the council.	The location of the contract council does not mean the unity of the place in which the transaction takes place in the narrow, limited sense.
Counter Argument/ new concept	In addition, the main purpose of the contract council is to determine the period of time that may separate the offer from the acceptance.	Since this period is not limited to the case in which the two contracting parties are present in the same place, its concept will extend to include contracting between distant persons absent in place and time.
General rule	All contracting modalities are by all means of transfer of will. The concept of the contract council in jurisprudence is a general rule that applies to cases of contract between present and absent, taking into account the specificity of the contract in terms of not requiring the offeree in contract council to issue his acceptance at the same time and place in which the offer reaches.	

Result: the contract council can be defined as the time interval between the offer and the acceptance, and during that period the offer remains valid to be associated with the acceptance is determined. Therefore, there is a complete harmony between the concept of the council option in Islamic jurisprudence and financial contracts via blockchain technology.